REMARKS

35 U.S.C. § 103 Rejection of Claims 1-4, 7, 9-15, 18, 20-23

The Examiner rejects claim 1-4, 7, 9-15, 18, 20-23 under 35 U.S.C. § 103(a) as being unpatentable over Fitzgerald (U.S. Patent No. 6,776,459) in view of Murin (U.S. U.S. 1,500,884). Specifically, the Examiner suggests that Fitzgerald teaches all the elements of Applicants' claim 1, but that Fitzgerald does not teach a spinner assembly through which an axle and hub is insertable therethrough in addition to a bushing. The Examiner posits that the general concept of providing a spinner through which an axle and hub is insertable therethrough in addition to a bushing in a spinner assembly is well known in the art as illustrated by Murin, which discloses the teaching of a spinner through which an axle and hub is insertable therethrough in addition to a bushing in a wheel spinner assembly. Applicant disagrees with and traverses the Examiner's rejections.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. See M.P.E.P. § 2143.03. Applicants note that Fitzgerald teaches an air-driven rotating device 11 attached to the mounting cup 14 by the use of securing screws 15. The securing screws 15 hold together the cone end cap 10 and the air driven rotating device 11 to the mounting cup 14. The bearing 12 is held in place by the locking clip 13 onto the rotating device 11. The mounting cup 14 is secured to the axles by the setscrews 16. (For a description of the Fitzgerald device refer to Fitzgerald, column 3, lines 6-12). Applicants note that the mounting cup of Fitzgerald is stationary. (See Fitzgerald, column 1, lines 47-51). Additionally, the rotating device 11 of Fitzgerald does not include a central bore through which a wheel axle shaft or wheel hub is insertable. (See Fitzgerald Figures 1-3, and 7; column 3, lines 6-9). Instead, the rotating device 11 is held between an end cap 10 and the mounting cup 14 using a securing screw about which the rotating device rotates.

Thus, the Fitzgerald design in fundamentally different from the Applicants' design in that the Applicants design does not include a mounting cap and cup arrangement. Moreover, Fitzgerald does not teach that the spinner rotates around the wheel axe 17 or a hub. Instead, Fitzgerald teaches the air driven rotating device 11 (i.e., spinner) is attached to the mounting cup 14 and the mounting cup 14 is

secured to an aft end of the cup 14. (See Figs. 1-3). More importantly, the portion of the spinner in Fitzgerald that is rotating rotates around a securing screw 15. The rotating portion does not rotate around the shaft or the hub (i.e., axle 17 of Fitzgerald). Indeed, no part of the rotating portion of the cup 14 rotates around axle 17. The rotation of the rotating portion of the cup 14 rotates around the securing screw 15, which is displaced from the axle 17. Accordingly the rotating portion in Fitzgerald (e.g., the spinner), the spinner does not rotate around the axle as is claimed by the Applicants. See Fitzgerald, Figs. 1-3.

Further still, Applicants respectfully suggest that the Examiner has misinterpreted Fitzgerald in deciding that the mounting cup is comparable to the Applicants' hub or axle, which is inserted through a spinner central bore. (See Applicants' claim 1). Instead, the mounting cup of Fitzgerald is not inserted through the spinner central bore. In Fitzgerald, it is the securing screw that is inserted through the central bore of the rotating device. Applicants can find no suggestion in Fitzgerald that the mounting cup or cap is inserted through the central bore of the rotating device, as would be necessary for Fitzgerald's mounting cup and cap to be comparable to Applicants' hub and axle. Applicants respectfully suggest that a proper reading of Fitzgerald clearly indicates that Fitzgerald does not include all the elements of Applicants' independent claims as posited by the Examiner. Applicants request greater clarification of the Examiner's argument.

Even further, the spinner 25 in Murin is adapted to be affixed to the hub 11 of a wheel using a collar 20, which is reposed on roller bearings 24, which surround a portion of a cap 12, wherein the cap 12 is affixed to the hub 11 using a flange, nut and cotter pin arrangement. One skilled in the art would not have been motivated to combine Murin and Fitzgerald because the resulting invention would be inoperable. For example, Fitzgerald teaches that a securing screw is disposed central to the rotating device, while Murin teaches that the disk has a central opening to receive the cap in Murin. To include the cap in Murin in the central bore of the rotating device of Fitzgerald would displace the securing screw, thereby making it impossible to secure the rotating device as taught by Fitzgerald. Therefore,

Applicants respectfully suggest that the combination of Murin and Fitzgerald can only be made with hindsight reasoning.

The illustration of Murin as a source for indicating that it is well known to include an axle, hub, and bushing insertable through a spinner is improper when it is considered that Fitzgerald does not teach inserting a hub or axle through a spinner.

Applicants note that the combination of Murin and Fitzgerald does not teach or suggest a spinner as is claimed by the Applicants in Applicants' independent claims 1, 12, and 23. To combine Fitzgerald with Murin would lead to an inoperable invention. Thus, the combination of Fitzgerald and Murin does not disclose or suggest all of the limitations in Applicants' claims 1, 12, and 23. Fitzgerald and Murin cannot sustain a proper section 103 rejection.

35 U.S.C. § 103 Rejection of Claims 8 and 19

The Examiner additionally rejects Applicants claims 8 and 19 as being unpatentable over Fitzgerald and Murin, as applied to claims 1 and 12 in further view of Fenton (U.S. Patent No. 3,336,084). Namely, the Examiner suggests that Fitzgerald teaches all the limitations of claims 8 and 19 except for a wheel spinner assembly comprising radially disposed pockets responsive to the friction of passing air for increasing angular momentum. The Examiner suggests that the concept of providing a wheel spinner assembly comprising radially disposed pockets responsive to the friction of passing air for increasing angular momentum is well known as is illustrated by Fenton. Applicants respectfully disagree with the Examiner's arguments regarding claims 8 and 19 and therefore traverse the same.

As an initial matter, Applicants point out that the "spinner" disclosed in Fenton, is not a spinner as is described by Applicants or any of the other art cited by the Examiner. A "spinner" according to Fenton is an ornamental apparatus that attaches to a wheel, but does not rotate independently of the wheel. This is clearly illustrated in Fenton, for example, at column 1, lines 18-23:

"The axle caps are cylindrical

cap members having a pleasing design

and appearance and configured to fit through the center opening of the wheel, and to be held therein covering the axle and/or hub protruding from the center of the brake drum." [emphasis added] ;

And Fenton, column 1, lines 26-29:

"It is the object of this invention to provide novel and improved axle caps having improved and simplified means for mounting and holding or retaining the axle capes in the center opening of the wheel." [emphasis added]; and

Also, Fenton column 2, lines 65-72:

"From the foregoing it may be observed that eh axle cap 51 is retained within the opening 50 in the wheel by the extending flange 30 and also by the lugs 86 which fit into the radial channels 78 and come flush against the inside surfaces of the wheel 10. The lugs 86 further serve the purpose of preventing rotation of the axle cap 51 in the opening 50 within the wheel." [emphasis added]

Thus, any Fenton does not illustrate the general concept of providing a wheel spinner assembly comprising radially disposed pockets responsive to the friction of passing air for increasing angular momentum as is suggested by the Examiner. Indeed, the axle cap of Fenton is not responsive to passing air and does not have an angular momentum affected by the passing air as is claimed by Applicants. As such, Applicants respectfully suggests that the general knowledge of Fenton does not suggest any aspect of applicants' invention. Moreover, the combination of Fenton with Fitzgerald and Murin does not suggest or motivate Applicants' invention or teach all the elements thereof.

For the reasons noted above, Applicants respectfully request that the Examiner's section 103 rejections of Applicants' claims be withdrawn. Applicants respectfully assert that Applicants' independent claims (e.g., claims 1, 12, and 23) are patentable over the cited references and over the Examiner's application of the general knowledge pertaining thereto. Applicants note that if an independent claim is nonobvious under **35 U.S.C. 103**, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). See M.P.E.P. § 2143.03. As such, since Applicants' independent claims are patentable over the prior art, then those claims dependent from Applicants' patentable independent claims (e.g., claims 2-4, 7-11, 13-15, 18-22) are also patentable.

Applicants respectfully assert that Applicant's claims conform to section 112 and are all in a condition to be allowed. If the Examiner would like to discuss the above Amendment and remarks in detail, the Examiner is invited to call the Applicants at the number shown below.

Date: December 31, 2005

Respectfully submitted: Marc C. Mathis

Marc C. Mathis, Inventor
302-668-8139